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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Issued by the Department of Transportation on January 31, 2002

NOTICE OF ACTION TAKEN -- DOCKET OST-2000-7513- 85

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of Gemini Air Cargo, Inc. filed 1/30/02 for:

XX Exemption from Order 2000-10-19; startup deadline:

By Order 2000-10-19, the Department granted Gemini Air Cargo, Inc. (a) an exemption to engage in scheduled foreign air transportation of property and mail between Miami, Florida, on the one hand, and Quito and Guayaquil, Ecuador, on the other, (b) an exemption to integrate such authority with Gemini's existing certificate and exemption authority, and (c) an allocation of three weekly frequencies (narrow-body aircraft or wide-body equivalent) for services in the United States-Ecuador market. Gemini's frequency award was subject to a 90-day startup condition as well as our standard 90-day dormancy condition. Under the award, Gemini was required to begin service before January 21, 2001. Gemini has sought various extensions of the startup condition, stating that it had yet to receive an operating license from the Ecuadorian authorities. The latest extension is through February 2, 2002. In the instant request, Gemini seeks an extension through February 19, 2002.

In support of its request, Gemini states that it continues to wait for the General Directorate of Civil Aviation (DGAC) to issue Gemini the authorization required under Part 129 of Ecuadorian aviation regulations (or under a waiver from Part 129) for Gemini to start scheduled flights. In the interim, Gemini states that it has been operating all-cargo flights to Ecuador as charter flights that the DGAC has been willing to approve, noting that it operated three charter flights between January 25 and January 27 and another charter flight on January 28. In addition, Gemini notes that the DGAC has now approved an additional nine charter flights that Gemini intends to operate between January 30 and February 1. Gemini maintains that it is ready to initiate scheduled service as soon as the DGAC authorizes it to do so.

Applicant rep.: Muffett B. Roller (202) 331-3300 DOT analyst: Linda Senese (202) 366-2367

DISPOSITION

XX Granted, subject to conditions (see remarks below)

The above action was effective when taken: January 31, 2002, through February 19, 2002

¹ See Notices of Action Taken, dated January 19, 2001, April 23, 2001, July 20, 2001, August 23, 2001, September 6, 2001, October 19, 2001, November 1, 2001, November 19, 2001, December 18, 2001, and January 18, 2002, in the present docket, for the history of Gemini's requests for extension of the startup condition and our actions in response to these requests. In the September 6 action granting Gemini a further extension through October 19, and in the October 19, November 1, November 19, December 18, 2001 and January 18, 2002, extension notices, the Department required that Gemini submit on a weekly basis, specific information of precisely what steps Gemini had undertaken to meet the requirements of the Ecuador government in order to receive an Ecuadorian license. Gemini has done so, filing the most recent reports on January 22 and 28, 2002.

**XX Action taken by: Paul L. Gretch, Director
Office of International Aviation**

Remarks: In view of the circumstances presented, we have decided to grant Gemini's latest request for an extension of the startup deadline. We continue to believe that the record supports a finding that Gemini is continuing its good faith effort to commence its scheduled operations from Ecuador. In these circumstances, we believe that extension of the startup deadline is warranted. We expect Gemini to continue to report to the Department on a weekly basis on its progress.

We acted on this application without awaiting expiration of the 15-day answer period with the consent of all parties served.³

Under the authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; and (2) grant of the exemption was consistent with the public interest. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the action taken in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

² As we have previously noted (Notice of Action Taken September 6, 2001), Gemini's authority to serve Ecuador is for the operation of scheduled flights, and the frequencies allocated for operation of scheduled service are subject to a dormancy condition whereby failure to operate any frequency for a period of 90 days will result in such frequency reverting automatically to the Department for reallocation. We note that Gemini in this latest request notes that the DGAC has granted Gemini immediate authority to operate additional charter flights, which Gemini states that it intends to operate between January 30 and February 1, 2002. While Gemini has operated a number of Ecuador charters since receipt of its scheduled authority from the Department and now states that it will imminently operate further charter flights, the operation of charter flights does not negate the dormancy provision nor does it satisfy the startup condition for scheduled service. We continue to believe that, taking into account Gemini's charter operations, it is well positioned to begin scheduled services immediately upon final authorization from the DGAC for scheduled operations, and we expect it to do so.

³ Gemini stated that it had contacted counsel for the other carriers which were participants in this docket and that each had advised that it had no objections to DOT approval of this application.